

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY TABAREZ,

Plaintiff, No. CIV S-04-0360 LKK EFB P

vs.

DIANA BUTLER, et al.,

ORDER DIRECTING THE FILING OF
PRETRIAL STATEMENTS

Defendants.

Plaintiff is a state prisoner proceeding with counsel in an action brought under 42 U.S.C. § 1983. On March 27, 2008, the district judge adopted in part and declined to adopt in part this court's February 28, 2008, findings and recommendations regarding defendants' motion for summary judgment. Thus, this action now is in pretrial proceedings.

At this stage in the action, the court finds it useful to note which claims survived summary judgment. Plaintiff's claims revolve around the procedures used on April 8, 2002, to end a lockdown at Folsom State Prison and the efforts used to control an ensuing riot. The surviving claims are those plaintiff makes against Lemon and Rios. Plaintiff claims that Lemon was deliberately indifferent to plaintiff's safety by utilizing unsafe procedures for ending the lockdown. He also claims that Rios used excessive force during the riot when he repeatedly shot plaintiff in the head with rubber bullets.

1 Before he retained counsel, plaintiff filed a pretrial statement. Plaintiff's counsel may
2 file an amended pretrial statement if he deems it advisable to do so.

3 Accordingly, the court by minute order set the matter for pretrial conference. *See* Local
4 Rule 16-282. The parties shall appear before the undersigned through counsel on September 30,
5 2009, in Courtroom No. 25 on the 8th floor at 10:00 a.m. The date for trial will be set in the
6 forthcoming pretrial order.

7 Accordingly, it hereby is ORDERED that:

8 1. Plaintiff may file an amended pretrial statement. If he does, he must comply with
9 Local Rule 16-281.

10 2. Defendants shall file their pretrial statements in accordance with Local Rule 16-281.

11 DATED: September 8, 2009.

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13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE